

TITLE 23: CALIFORNIA CODE OF REGULATIONS

WATERS

DIVISION 3: STATE WATER RESOURCES CONTROL BOARD

CHAPTER 16: UNDERGROUND STORAGE TANK REGULATIONS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN THAT THE STATE WATER RESOURCES CONTROL BOARD PROPOSES TO ADOPT AMENDMENTS TO THE UNDERGROUND STORAGE TANK REGULATIONS AFTER CONSIDERING ALL COMMENTS, OBJECTIONS, AND RECOMMENDATIONS REGARDING THE PROPOSED ACTION

PROPOSED REGULATORY ACTION: The State Water Resources Control Board (State Water Board) proposes to amend sections 2621, 2632, 2634, 2635, 2636, 2637, 2638, 2661, 2666, 2711 and 2713, and to delete the text, forms and instructions in Appendix V in Title 23 of the California Code of Regulations (CCR). These sections concern underground storage tanks.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

The State Water Board will hold a public hearing on the proposed amendments to regulations at 1:30 p.m., on July 16th, 2007 in the Byron Sher Auditorium at 1001 "I" Street, Sacramento, CA. Reasonable accommodation or sign language interpreting services will be provided upon request. Such requests should be made no later than 15 days prior to the date of the public hearing by contacting Karen White, Office of Employee Assistance, at 916-341-5883.

Any written statements, arguments or contentions related to the proposed regulations must be received by 5:00 p.m. on July 16th, 2007. Submit written comments to: Terry Brazell, State Water Resources Control Board, UST Program, 1001 "I" Street, P.O. Box 2231, Sacramento, CA, 95812. Written comments, arguments, or contentions sent by mail or hand-delivered are requested (but not required) to be submitted in triplicate. Comments by FAX (916-341-5808) must be received before 5:00 p.m. on the last day of the public comment period.

AUTHORITY AND REFERENCE

Water Code sections 185 and 1058, and Health and Safety Code sections 25299.3 and 25299.7, authorize the State Water Board to adopt the proposed amendments to regulations, which would correct non-substantive errors in the current regulations and implement the underground storage tank permit application and data reporting requirements of Health and Safety Code, Chapter 6.7, sections 25286 and 25289.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

California's Legislature enacted Health and Safety Code (HSC) Chapter 6.7 in 1984, creating a regulatory program for underground storage tanks (USTs) storing hazardous substances. Since then, the Legislature has amended Chapter 6.7 in response to federal mandates relating to USTs, or new information regarding changing industry practices and/or the performance of USTs meeting then current UST regulatory standards in California. Various amendments to Chapter 6.7 in recent years have imposed new construction and monitoring requirements for USTs that cannot be documented properly on the UST permit application forms currently in regulation. Therefore, updated versions of the UST permit application forms are needed.

These proposed regulations will amend the references to UST operating permit application "Form A," "Form B," and "Form C" throughout Title 23, Chapter 16. These amendments reflect concurrent regulatory changes to the titles and content of these forms that were previously revised and relocated from Title 23, Appendix V (following § 2714) to CCR, Title 27, Division 3, Subdivision 1, Chapter 6. The proposed amendments will also correct several non-substantive errors in the current regulations, and implement the UST permit application and data reporting requirements of HSC, Chapter 6.7, sections 25286 and 25299.7.

Many of the amendments proposed by the State Water Board are made to conform to amendments proposed by the California Environmental Protection Agency (CalEPA) through a concurrent rulemaking. The UST permit application forms, revised and relocated from Title 23 to CCR, Title 27, Division 3, Subdivision 1, Chapter 6 via a 1999 CalEPA rulemaking, are concurrently amended by CalEPA. The revised forms, as well as a new standardized monitoring plan form, are designed to be easier and less time consuming for local regulatory agencies and UST owners and operators to complete. Additionally, the Report 6 used by CUPAs is revised via concurrent CalEPA rulemaking to standardize Red Tag reporting and to meet United States Environmental Protection Agency UST data reporting requirements. This rulemaking updates each of the Title 23 references to the amended permit application forms and Report 6.

The previous requirement for UST owners and operators to submit a written procedure for monitoring has been amended to specify that the written procedure be submitted on a standard form. Using a standard form will make it easier for owners and operators to provide complete and accurate information about their monitoring program, and will promote consistency among the more than 100 local regulatory agencies implementing the UST program in California. The referenced "Monitoring Plan" form is proposed to be adopted into CCR, Title 27 by CalEPA.

In summary, these amendments to Title 23 will:

1. Amend the references to UST operating permit application "Form A," "Form B," and "Form C" throughout Title 23, Chapter 16. These amendments reflect concurrent regulatory changes to the title and content of these forms that were previously revised and relocated from Title 23, Appendix V (following § 2714) to CCR, Title 27, Division 3, Subdivision 1, Chapter 6.
2. Specify that UST owners and operators use a new standard form for submitting new and previously required information on procedures for

monitoring. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA. This standard form will make it easier for owners and operators to provide complete and accurate information about their monitoring program, and will promote consistency among the more than 100 local regulatory agencies implementing the UST program in California.

3. Specify that local regulatory agencies use a new reporting format for submitting new and previously required information on UST statistics, inspections, and enforcement activities. The new standard form is being concurrently adopted into CCR, Title 27, Division 3, Subdivision 1, Chapter 6, by CalEPA.
4. Make several non-substantive clarifications and corrections to unclear sections or erroneous citations and references within Title 23, Chapter 16.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code: The State Water Board has determined that the proposed amendments would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Cost or Savings to any State Agency: The State Water Board has determined that these regulations will not result in any cost or savings to any State agencies. State agencies that own or operate USTs will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for State agencies that own and/or operate USTs.

Other Non-discretionary Costs or Savings to Local Agencies: The State Water Board has determined that these regulations will not result in any cost or savings to any local government agencies. Local government agencies that regulate UST systems will have to modify their databases to accommodate the new and revised forms referenced in these proposed regulations. Costs associated with that modification are part of overall database management costs associated with concurrent rulemaking by Cal/EPA and the Department of Toxic Substances Control (DTSC). These costs are discussed in detail in the concurrent Cal/EPA, Title 27 rulemaking that includes the modified and new UST forms referenced in this rulemaking. It would be duplicative to include an analysis of those costs in this rulemaking.

Local government agencies that own or operate USTs will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have

been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for local government agencies that own and/or operate USTs.

Cost or savings in federal funding to the state: None.

ECONOMIC IMPACT ESTIMATES

Statement of Significant Statewide Adverse Economic Impact Directly Affecting California Businesses: The State Water Board has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Types of Businesses Affected: Any business that owns and/or operates a UST system that is not categorically exempt from the UST regulations may be affected by the proposed regulations. These businesses are mostly retail fuel service stations either owned or leased-out by major petroleum distributors, or small, independently owned facilities. Other businesses affected include those that own or operate USTs for their own use, such as, but not limited to, factories, equipment rental yards, construction companies, mines.

Projected Reporting, Record keeping, and Other Compliance Requirements: The proposed regulation will mandate use of new forms to transmit information to local regulatory agencies. The information being transmitted will not be new, only the format.

Potential Impact on Private Persons or Businesses Directly Affected: The State Water Board has made an initial determination that those private persons or businesses using computer software to generate UST permit application forms may incur a one-time cost to modify their computer software to comply with the proposed regulations. These costs, expected to be minor, are discussed in detail in the concurrent Cal/EPA, Title 27 rulemaking that includes the modified and new UST permit application forms referenced in this rulemaking. It would be duplicative to include an analysis of those costs in this rulemaking.

Effect on the Creation or Elimination of Jobs within California: The State Water Board has determined that these regulations will not have any effect on the creation or elimination of jobs within California.

Effect on the Creation of New Businesses or Elimination of Existing Businesses within California: The State Water Board has determined that these regulations will not have any effect on the creation of new businesses or elimination of existing businesses within California.

Effect on the Expansion of Businesses Currently Doing Business in California: The State Water Board has determined that these regulations will not have any effect on the expansion of businesses currently doing business in California.

Potential Significant Impact on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The State Water Board has determined that this regulation will not have any effect on the small businesses within California. Businesses that own or operate USTs will have to submit information about the construction and monitoring of their UST systems in a new format, but submittal of this information is not a new requirement. UST owners and operators have been required to submit information about the construction and monitoring of their UST systems for years, and only the format of that information will change with these regulations. The new format is intended to save time and effort on the part of UST owners and operators, so there will likely be an incidental time savings (and associated cost savings) for businesses that own and/or operate USTs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Water Board must determine that no reasonable alternatives it considered, or that have otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Water Board has prepared the following for public review: 1) an initial statement of reasons for the proposed amendments; 2) a rulemaking record which contains all of the information upon which the proposed amendments are based; and 3) the text of the proposed amendments. Copies of these documents will be available upon request by writing to the State Water Resources Control Board, attention: Mrs. Terry Brazell, Division of Water Quality, Underground Storage Tank Program, 1001 "I" Street, 15th Floor, P.O. Box 2231, Sacramento, CA, 95812. This address is also the location of public records, including reports, documentation, and other material related to the proposed amendments. Copies of these documents are also available on the State Water Board's Underground Storage Tank Program website at: <http://www.waterboards.ca.gov/ust/>. Upon completion of the public comment period and conclusion of the public hearing for this proposed rulemaking the State Water Board will prepare a final statement of reasons for proposed amendments, which will also be available upon request at the above address and website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period and public hearing, the State Water Board may adopt the proposed regulations. If substantive changes are made, the modified text will be made available for comment for at least 15 days prior to adoption, and sent to the following persons: all persons who testified at the public hearing; all persons who submitted written comments at the public hearing; all persons whose comments were

received by the State Water Board during the public comment period; and all persons who requested notification from the State Water Board of the availability of such changes.

Please direct all written comments, procedural inquiries, and technical questions to:

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Division of Water Quality
1001 "I" Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812
(916) 341-5645
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Back-up contact person:

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